

Regulatory Committee

Meeting to be held on 13 May 2015

Electoral Division affected:
Thornton Cleveleys North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

Application to add a public footpath from Ormerod Street to Gamble Road, Thornton Cleveleys, Wyre Borough to the Definitive Map and Statement of Public Rights of Way

File No. 804-557

(Annex 'A' refers)

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Executive Summary

An application for a public footpath from Ormerod Street to Gamble Road to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-557.

Recommendation

1. That the application for a public footpath from Ormerod Street to Gamble Road to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-557, be accepted
2. That an Order be made pursuant to Section 53(2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) the Wildlife and Countryside Act 1981 to add a public footpath from Ormerod Street to Gamble Road to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-F.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

Background

An application has been received for a footpath extending from a point on Ormerod Street to a point on Gamble Road, a distance of approximately 500 metres, and shown between points A-F on the attached plan, to be added to the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist” or
- "The expiration.... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path"

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that factors such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Wyre Borough Council has been consulted and no response has been received so it is assumed they have no comments to make.

There is no parish council for this area.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in ‘Advice – **Head of Service** -Legal and Democratic Services’ Observations’.

Advice

Head of Service – Planning and Environment'ss Observations

Points annotated on the attached Committee plan.

| Point | Grid Reference (Square SD) | Description |
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| A | 3392 4349 | Junction of route with Ormerod Street (now inaccessible due to safety fencing around perimeter of development site) |
| B | 3386 4353 | Route passes through gateway (no longer accessible or evident on ground due to development) |
| C | 3384 4369 | Route passes through gateway (no longer accessible or evident on ground due to development) |
| D | 3381 4379 | Route passes through gap in hedge with adjacent gatepost |
| E | 3378 4391 | Route crossed by wooden post and rail fencing |
| F | 3378 4394 | Junction of route with Gamble Road |

Description of Routes

The total length of the route is approximately 500 metres.

An initial site inspection was carried out in June 2014 to verify the application plan and photographs of the route were taken. A further inspection was carried out in March 2015 by which time the route between point A and point D was no longer accessible due to the site being fenced off and the construction of a community sports complex and training ground being well under way.

In June 2014 it was possible to gain access to the application route from Ormerod Street at point A on the Committee plan. Three large concrete blocks were positioned across the start of the route which would prevent vehicular access but which did not prevent pedestrians. Broken fencing and barbed wire was evident on either side of point A but this did not prevent access and there were no signs indicating whether the application route was considered to be public or private at this point.

From point A the application route followed a worn path, visible in the long grass, approximately 0.5 metres wide, in a north westerly direction to point B. The path was unsurfaced but appeared to have become worn as a result of significant use.

At point B the route passed over a concrete strip approximately 3.5 metres wide and 6 metres long and passed through the remains of a gateway (gateposts in situ but no gate). The concrete strip looked like it may have been laid at some point in the past to prevent the gateway becoming muddy.

Beyond point B the application route continued in a northerly direction across a grassed area with a worn path approximately 0.5 metres wide visible throughout the full length. Immediately south of point C it passed to the east of a pond alongside which the path widened to follow a worn track approximately 3 metres wide.

At point C the route passed through gateposts (no gate) and continued in a generally northerly direction across a grass field along a 0.5 metre visible worn track on the ground to point D.

At point D the application route passed through a gap in a broken hedge where a wooden gatepost was situated on the east side of the path. An old sign stating 'Private Property Keep Out' was nailed to the post but due to its position it was not immediately apparent whether the sign indicated that the land to the north or to the south of point D was the private land referred to.

From point D the application route continued in a generally northerly direction to cross a well maintained playing field. No worn path was visible but it was possible to walk the application route to point E where the route was crossed by a wooden post and rail fence and brambles that were growing along the fence line. The fence was broken down at various points east and west of point E but it was difficult to climb the fence at point E.

Beyond point E the application route continued for approximately 50 metres across rough grass to exit onto Gamble Road at point F at which point there was the remains of some wooden posts and a small mound of earth running parallel to Gamble Road. No signs indicated the existence of the application route at point F.

When the route was re-inspected in March 2015 it was no longer possible to walk between points A and point D as the land had been fenced off and any evidence of a worn path removed as part of the construction of the football pitches and sports facilities.

The route between points D-E-F remained unaltered from when it had been inspected in 2014 with the exception of a football pitch being marked out on the playing field between point D and point E which it would be necessary to cross if walking the route applied for.

Map and Documentary Evidence

| Document Title | Date | Brief Description of Document & Nature of Evidence |
|---------------------------------|-------------|--|
| Yates' Map of Lancashire | 1786 | Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. |



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| Observations | | The application route is not shown. Pool Foot is shown on the map south of the land crossed by the route but the two roads between which the application route runs are not shown. |
| Investigating Officer's Comments | | The route under investigation probably did not exist in 1786. |
| Greenwood's Map of Lancashire | 1818 | Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | The route under investigation probably did not exist in 1818. |
| Hennet's Map of Lancashire | 1830 | Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most |

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| | | helpful that had yet been achieved. |
| Observations | | The route under investigation is not shown. Pool Foot is shown but the two roads between which the application route is said to run are not shown. |
| Investigating Officer's Comments | | The route under investigation probably did not exist in 1830. |
| Canal and Railway Acts | 1877 | Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement could not be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built. |
| Observations | | The land affected by the application was not crossed by any proposed railways or canals. |
| Investigating Officer's Comments | | No inference can be drawn. |
| Tithe Map and Tithe Award or Apportionment | 1839 | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. |



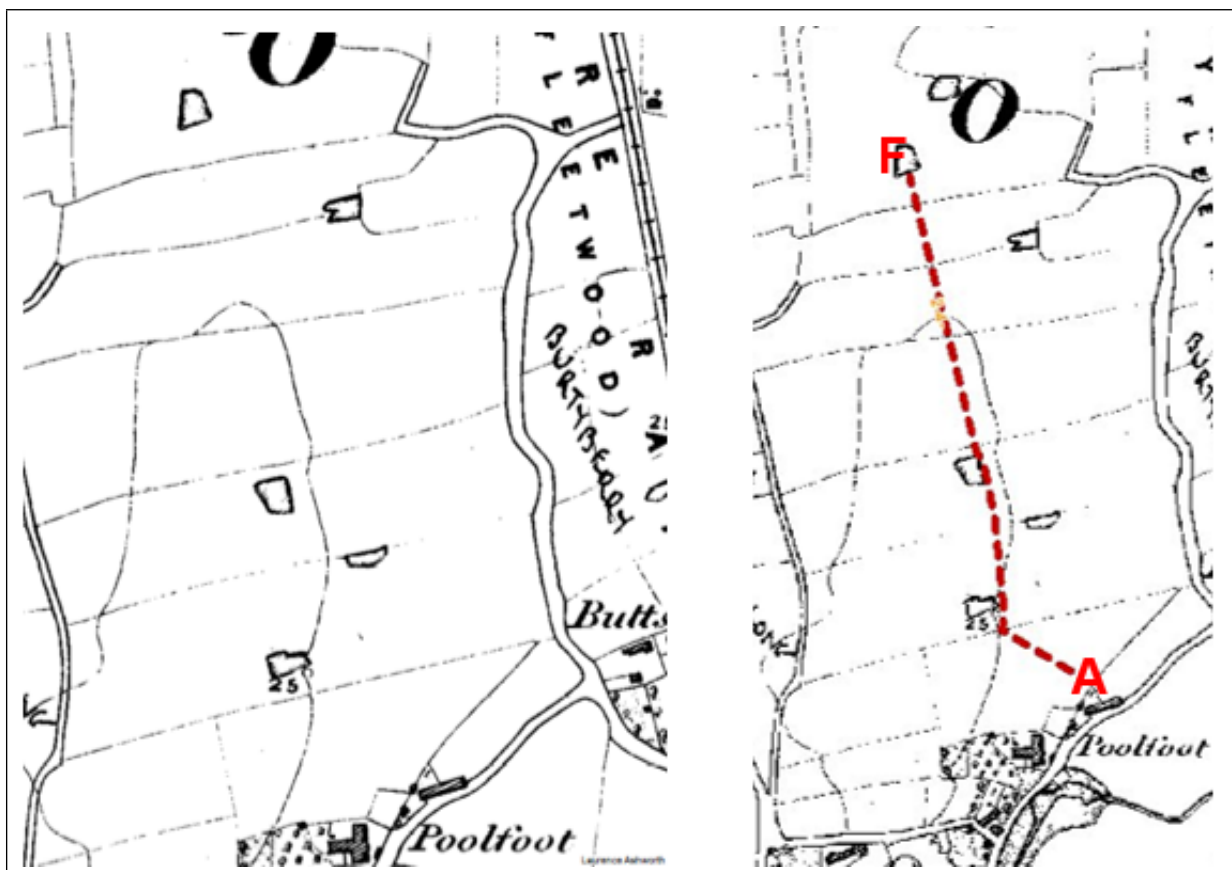
Observations

The application route is not shown on the Tithe Map and there is no reference to its existence in the Tithe Schedule.

Poolfoot is shown (but not named on the map) and it can be seen that point A is located north of the property but is not linked to the road past the farm. The route, if it existed, would cross 6 field boundaries between point A and point F and there is no indication that access existed through

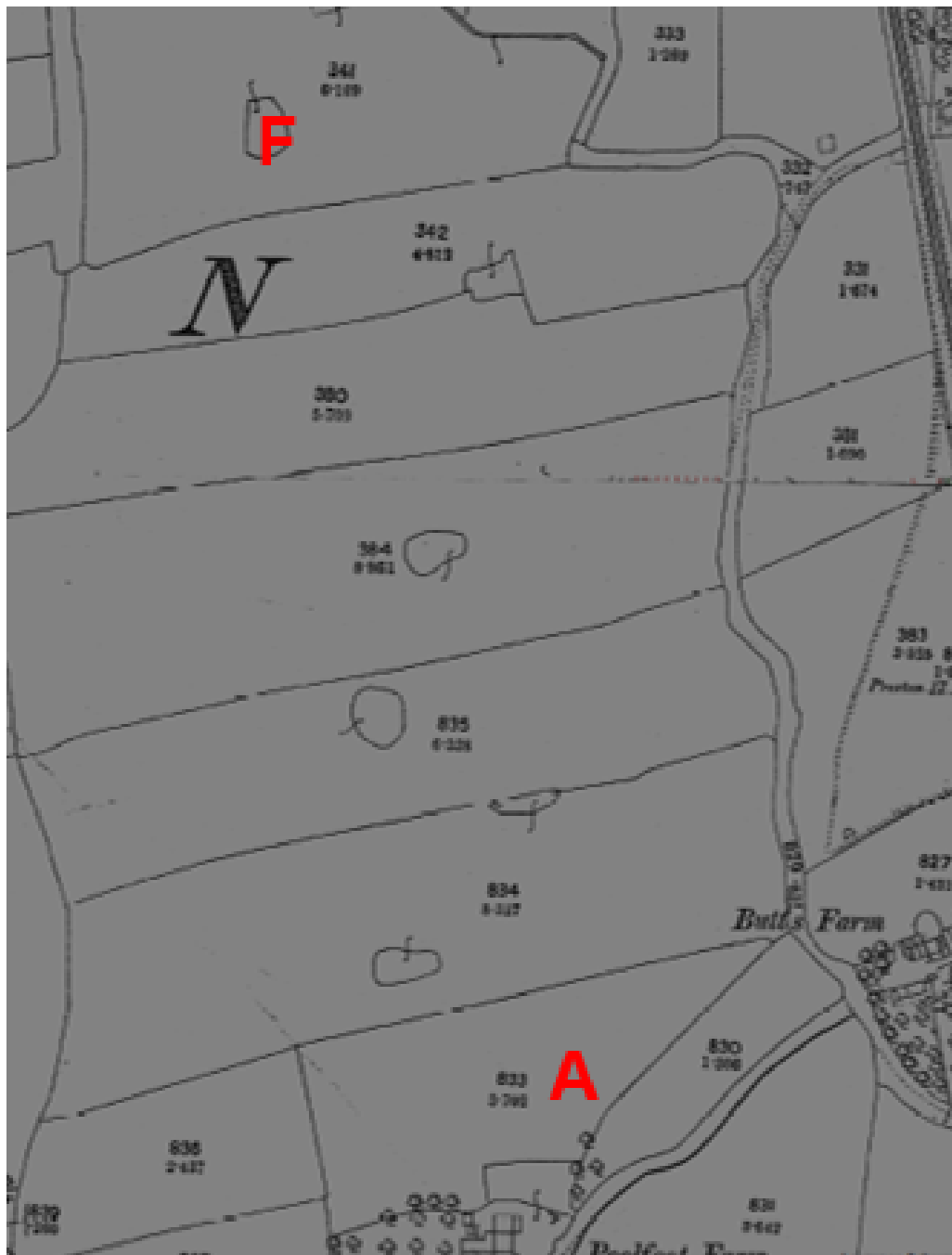
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| | | these boundaries. |
| Investigating Officer's Comments | | It is considered very unlikely that the application route existed in 1839. |
| Inclosure Act Award and Maps | | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | No Inclosure Award for the area crossed by the route under investigation has been deposited in the County Records Office. |
| Investigating Officer's Comments | | No inference can be drawn. |
| 6 Inch Ordnance Survey (OS) Map | 1848 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ¹ |

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



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| Observations | | <p>Two map extracts are provided above, the one on the left shows the land as recorded by the Ordnance Survey in 1848 and the one on the right is the same map showing the application route overlaid onto it.</p> <p>The application route is not shown on the 1848 map. Poolfoot is shown and it can be seen that point A is located north of the property but is not linked to the road past the farm. The route, if it existed, would cross 6 field boundaries between point A and point F and there is no indication that access existed through these boundaries. The application route would have terminated at the edge of the pond at point F.</p> |
| Investigating Officer's Comments | | <p>It is considered very unlikely that the application route existed in 1848. It is not shown as a worn track on the map and passes through at least 6 field boundaries. The start and finish points (point A and point F) do not appear to have been publicly accessible at that time.</p> |
| 25 Inch OS Map | 1891 | <p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and</p> |

published in 1891.



Observations

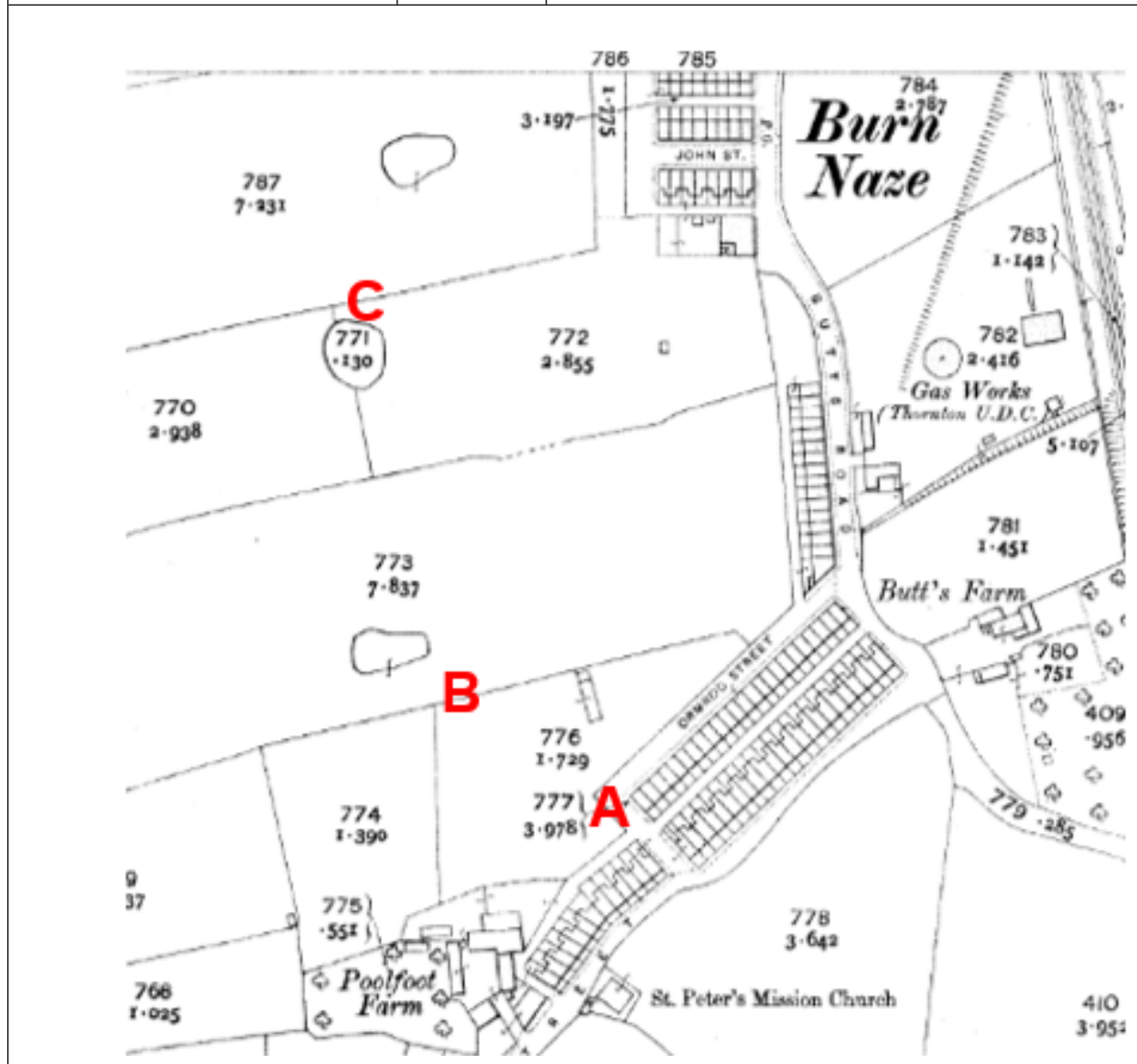
The application route is not shown on the map. The road and field layout do not appear to have changed since the area was surveyed for the 6 inch map in 1844.

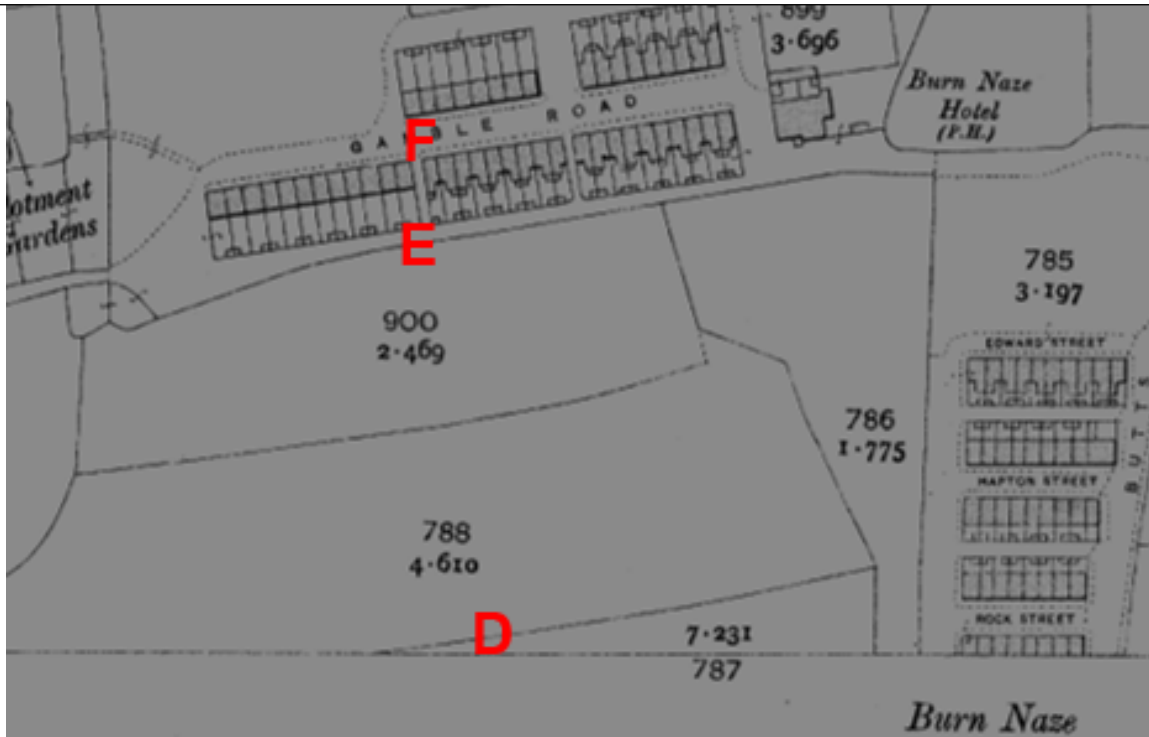
Investigating Officer's Comments

It is considered very unlikely that the application route existed in 1891. It is not shown as a worn track on the map and passes through at least 6 field boundaries. The start and finish points (point A and point F) do not appear to have been

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| | | publicly accessible at that time. |
| Finance Act 1910 Map | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> |
| Observations | | There are no Valuation Maps for the area crossed by the Application route in the County Records Office. The Valuation Book has been deposited but without knowing the hereditament numbers concerned it is not possible to check the appropriate entries. |
| Investigating Officer's | | No inference can be drawn. |

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| Comments | | |
| 25 inch OS Map | 1912 | Further edition of the 25 inch map re-surveyed in 1890, revised in 1909 and published in 1912. |





Observations

By 1912 it can be seen that Ormerod Street had been constructed and Poolfoot is now described as Poolfoot Farm. The application route is not shown. It would still be necessary to pass through 6 field boundaries between point B and point E and there does not appear to be an open junction at point A.

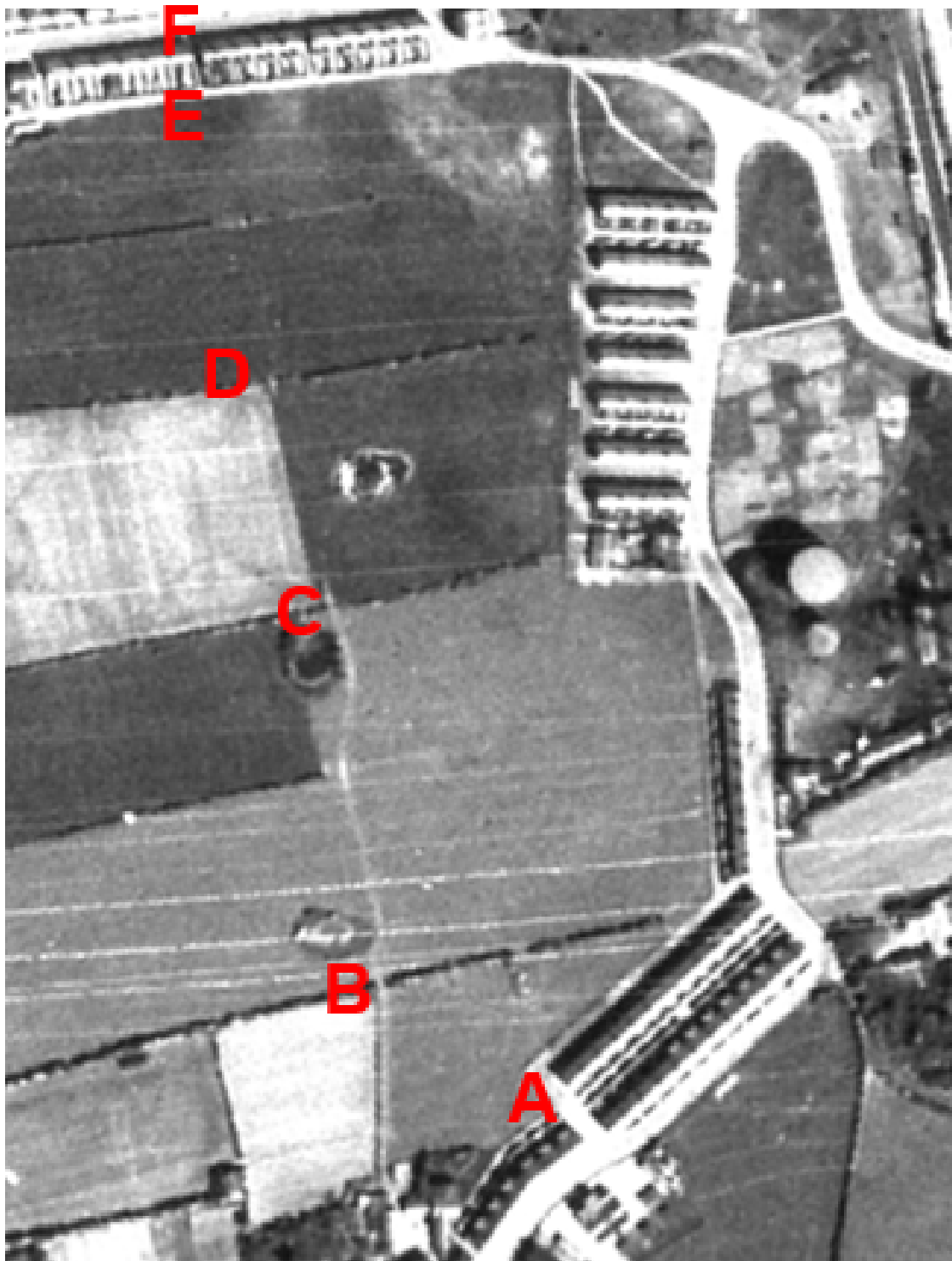
At point E the application route crosses a boundary and then passes along a gap that has been left between rows of terraced houses built along the south side of Gamble Road.

Investigating Officer's Comments

It is considered very unlikely that the application route existed in 1912. It is not shown as a worn track on the map between point A and point E and passes through at least 7 field boundaries. The start and finish points (point A and point F) now appear to be accessible from roads constructed since the previous edition of the map was published but there is no evidence that access was available at point A. Between point E and point F a route appears to have been constructed between the terraced housing providing access to the backs of the properties. This appears to have been open at point F and may have been accessible to the public.

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| 25 Inch OS Map | 1932 | Further edition of 25 inch map (surveyed 1890, revised in 1930 and published 1932. |
| Observations | | The land crossed by the application route is shown in the same way as on the 1912 Ordnance Survey Map. The application route is not shown with the exception of the gap between the terraced houses between point E and point F |
| Investigating Officer's Comments | | The application route probably did not exist with the exception of the section between point E and point F. |
| Aerial Photograph² | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable. |

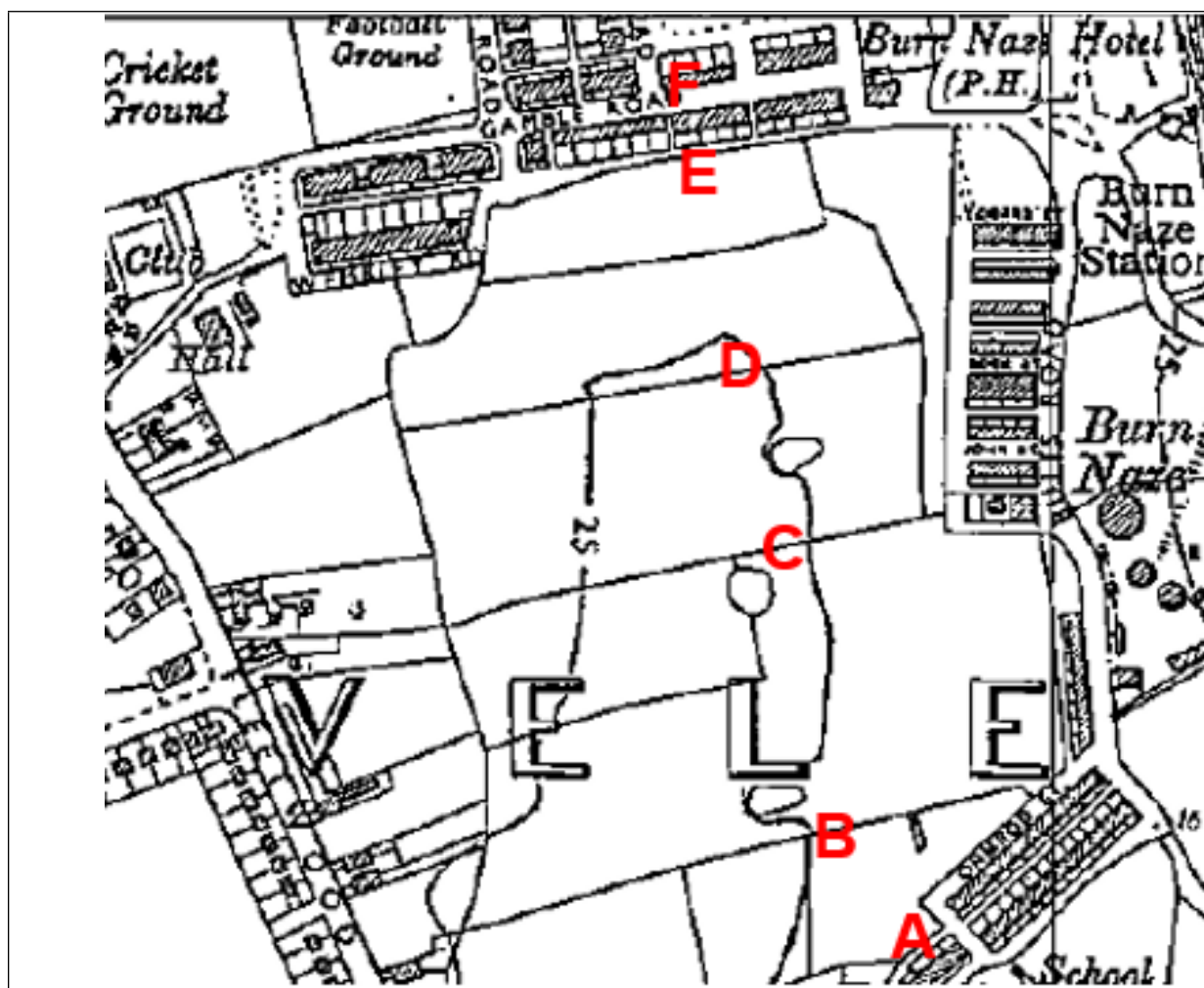
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



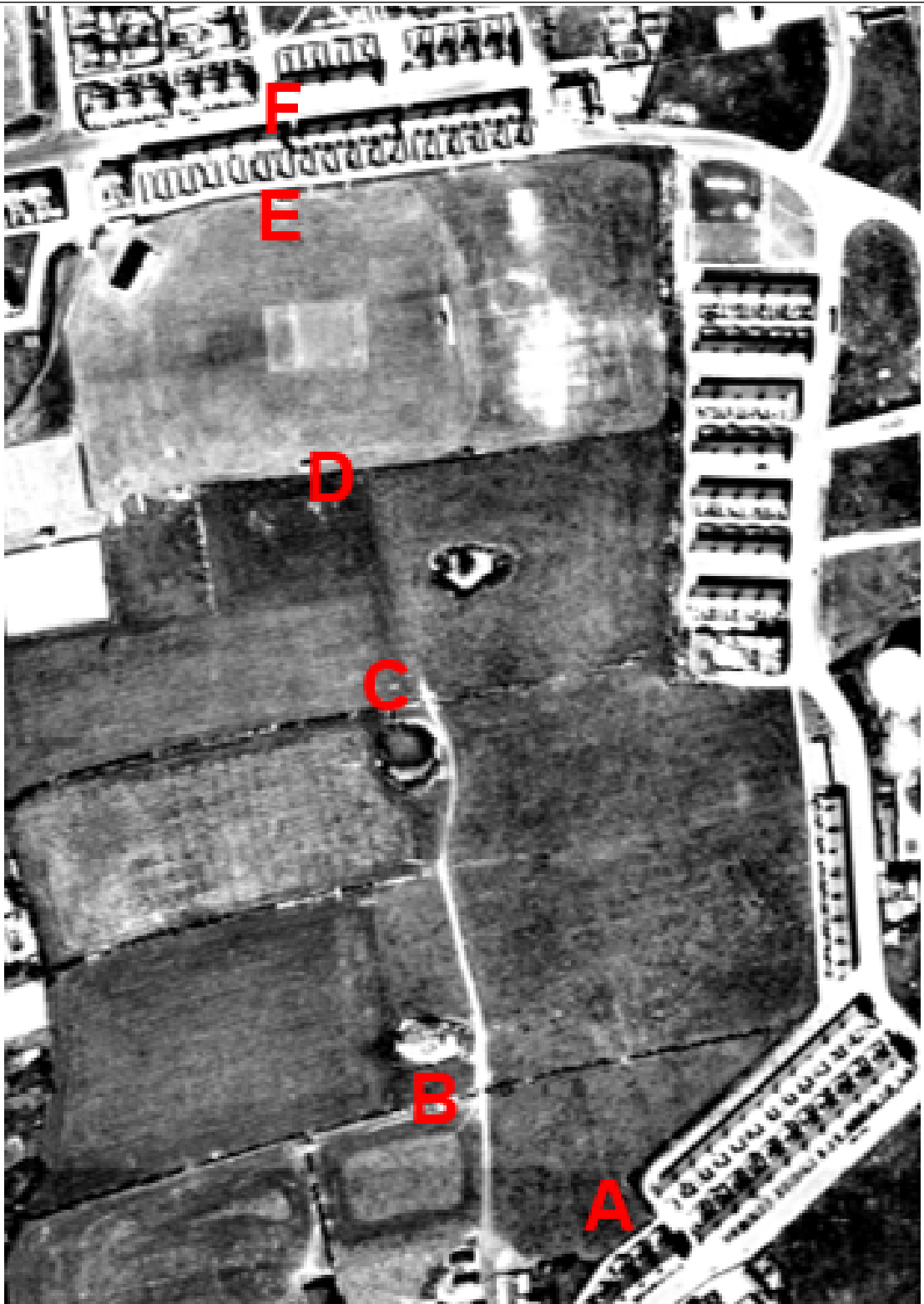
Observations

The earliest aerial photograph examined is of good quality. It does not show the application route existing as a worn track between point A and point B. A gap in the hedge can be clearly seen at point B and a track leads up to this gap from Pool Foot Farm. Between point B and point C a route near to but not quite following the

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| | | <p>application route can clearly be seen as a worn track on the ground and a route appears to exist through the hedge at point C. Between point C and point D the route cannot be seen as a worn track but it appears to cross a field which had possibly been cut to the west of the route but not cut to the east. Access through the hedge appears to be available at point D. Between point D and point E the route is not visible on the ground. A hedge/fence line can be seen midway between the two points which was marked on the earlier editions of the Ordnance Survey maps. This appears to be largely broken down and it looks like access would be available between point D and point E along the application route.</p> <p>The gap between the houses between point E and point F is visible but it is not possible to see whether there was a fence across the route at point E.</p> |
| Investigating Officer's Comments | | <p>With the exception of point E to point F the application route crossed farmland. Part of the route is visible as a track but this appears to be an access track from Pool Foot Farm.</p> <p>The application route may have been accessible but there is no evidence from the photograph confirming the existence of a through route.</p> |
| 6 Inch OS Map | 1957 | <p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised 1930-45 with major changes revised in 1950.</p> |



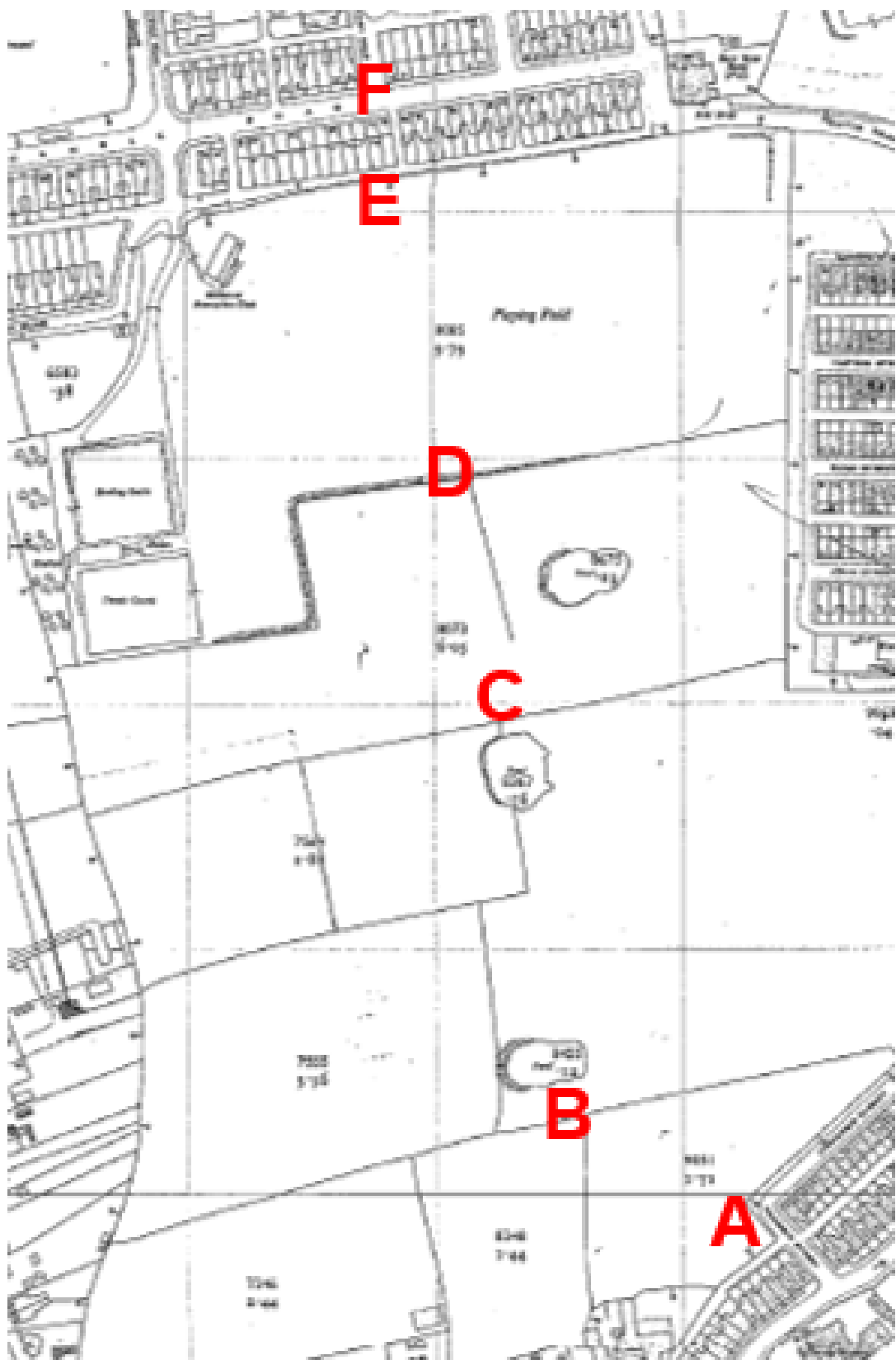
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| Observations | | The application route is not shown and the land crossed by the route appears unaltered from the earlier edition of the 25 inch Ordnance Survey Map. |
| Investigating Officer's Comments | | The application route probably did not exist when the map was revised between 1930-1950. |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |



Observations

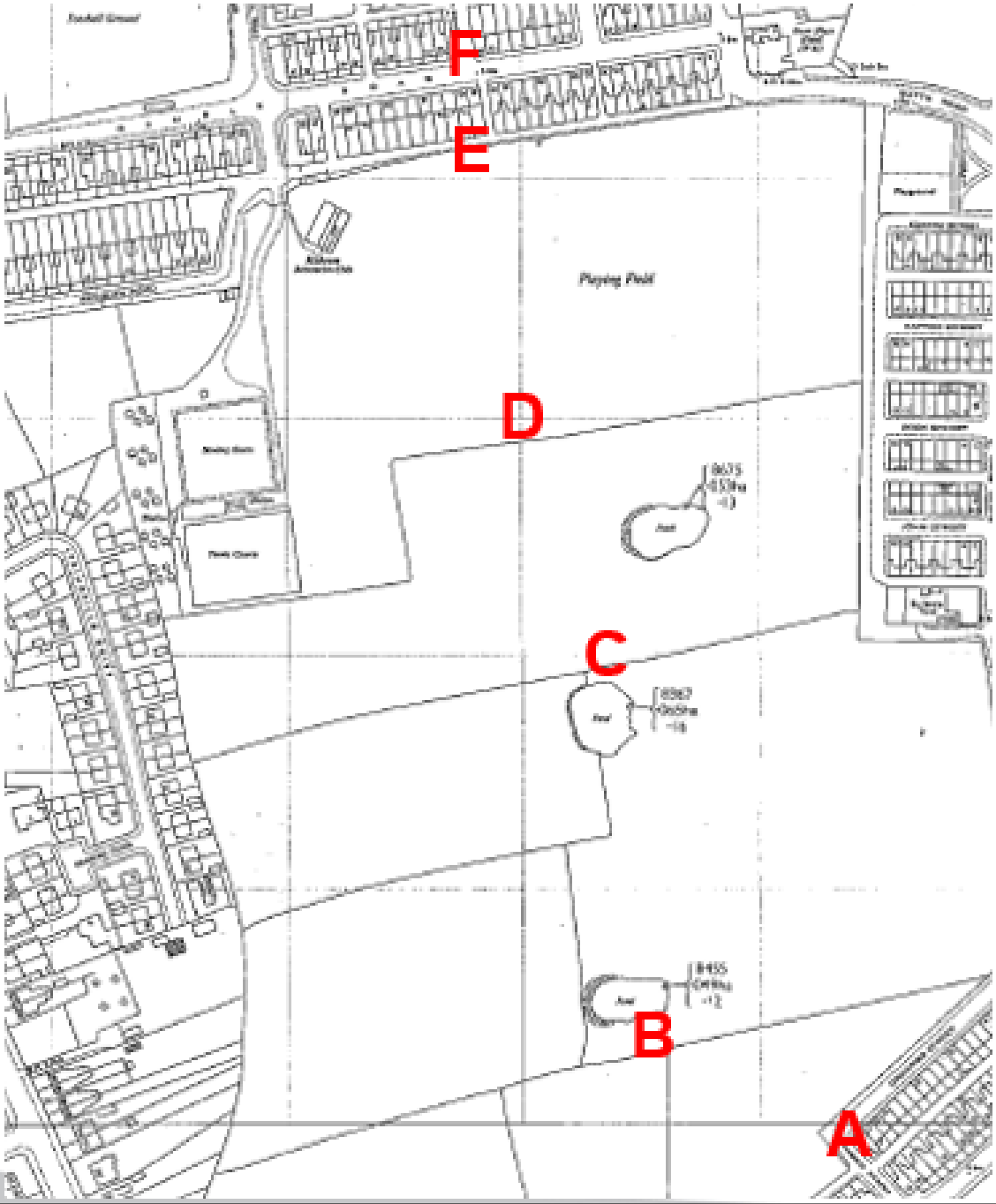
The application route is not shown between point A and point B. A substantial farm track is shown from Pool Foot Farm to point B and then along a line near to but slightly off the line of the application route to point C. There appears to be access into the field at point C but there is no worn track from


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| | | <p>point C to point D and there does not appear to be access through the hedge at point D.</p> <p>Between point D and point E the use of the land has changed since the 1940 aerial photograph was taken and the line of the application route crosses directly over the square of a cricket pitch to point E. There is no visible route between point D and point E.</p> <p>There appears to be a gap in the boundary near point E which may have provided access to or from the cricket field and application route.</p> <p>The route between the houses from point E to point F is not visible from the photograph.</p> |
| Investigating Officer's Comments | | <p>Between point A and point D the route crossed farm land and whilst part of it (point B to point C) was close to but not quite coincided with a farm access track there is nothing to suggest that the route existed as a through route.</p> <p>Access to and across the cricket field may have been available but there is no evidence that the application route was in regular use and access along it may have been affected by use for cricket or by the square – whilst it is not known of the particular circumstances here it was widespread practice at that time that a cricket square was not walked on except during matches and a groundsman would often take steps to protect the square.</p> |
| 1:2500 OS Map | 1961 | Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1961 as national grid series. |



Observations

The application route is not shown with the exception of the gap between the terraced houses between point E and point F. The land crossed by the application route between point D and point E is identified on

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| | | the map as a playing field. |
| Investigating Officer's Comments | | With the exception of the route between point E and point F the application route does not appear to exist as a worn track on the ground in 1961. |
| 1:2500 OS Map | 1971 | 1:2500 OS map published in 1971. |
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| Observations | | The application route is not shown with the exception of the gap between the terraced houses between point E and point F. The land crossed by the application route between point D and point E is identified on the map as a playing field. |

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| Investigating Officer's Comments | | With the exception of the route between point E and point F the application route does not appear to exist as a worn track on the ground in 1971. |
| Aerial Photograph | 1988 | Aerial photograph available at CRO and LCC Cuerden Offices. |
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| Observations | | <p>The application route is not visible as a worn track on the ground between point A and point B. A farm access track is still visible from the back of Pool Foot Farm to point B and through to point C. The application route is not visible between point C and point E and it is not possible to see from the photograph whether any sports pitches are marked out between point D and point E.</p> <p>The terraced housing along the south side of Gamble Road has been demolished and it looks like a network of surfaced paths have been put across the land. One of these paths can be seen crossing the application route between point E and point F. It is not possible to see from the aerial photograph whether the route between point E and point F was accessible.</p> |

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| Investigating Officer's Comments | | The application route did not appear to exist as a through route following a worn route visible on the ground in 1988. |
| Aerial Photograph | 2000 | Aerial photograph available to view on GIS. |



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| Observations | | <p>The application route is not visible as a worn route between point A and point B and the land that it crosses appears to form part of Pool Foot Farm. A well-worn access route from the farm to point B can be seen and this track follows the application route as far as point C and into the field through a gap in the hedge. The application route is not visible on the ground between point C and point D or between point D and point E where it crosses the playing field. It is not possible to see whether access was available through the fence/hedge at point E and there is no worn path or laid out path between point E and point F although there does appear to be a worn access point onto the strip of land that the terraced hoses had previously been built on at point F.</p> |
| Investigating Officer's Comments | | <p>The application route did not appear to exist as a through route following a worn route visible on the ground in 1988. There was a worn trod between points B and C on the application route unlike on previous photographs where a slightly different route was visible. This appears to be because a hedge had been removed allowing a more direct line to be taken.</p> |
| Aerial Photograph | 2010 | Aerial photograph available to view on GIS. |



Observations

The most recent aerial photograph available to view as part of the County Councils records.
The application route can be clearly seen as a worn track between point A and point

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| | | B and the access track from the rear of Pool Foot Farm now looks much less significant. Between point B and point C traces of the application route can be seen as a faint track within a wider enclosed strip between fencing/hedges. No worn track can be seen between point C and point D or across the playing field to point E. It is not possible to see whether access was available at point E and no worn track is visible between point E and point F. |
| Investigating Officer's Comments | | This is the first photograph to show a worn track consistent with pedestrian use between point A and point B and it appears that the frequency of access to the land from Pool Foot Farm may have reduced. However, the application route did not appear to exist as a through route following a worn route visible on the ground in 2010. |
| Google Images | 2012 | Google images captures September 2012 |

POINT A



POINT F



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| Observations | | These photographs show the start and finish points of the application route. At point A it can be seen that the route is accessible to pedestrians and that a worn track extends from point A in the direction of point B. At point F it appears that access may have been available but that there was no clearly defined or worn route and that some sort of fencing may have been in existence. |
| Investigating Officer's Comments | | The photographs confirm that access onto the application route existed at point A in 2012 and shows that access between point E and point F would have been available but that there was no worn track and that access may have been restricted by posts that appeared to have been erected with the purpose of providing some sort of fence. |
| Photographs provided by NPL Estates | | A number of photographs were submitted by the landowners stating that they illustrated a lack of use of the application route. |

September 2008



September 2008



Observations

The two photographs included within the report were labelled as being taken in 2008 and show the land crossed by the application route. On the second photograph it is possible to pick out a faint track between point B and point D consistent with the application route. Between point D and point E it can be seen that a football pitch had been marked out on the land crossed by the application route.

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| Investigating Officers Comments | | The photographs suggest that there may have been some low level use of at least part of the application route in 2008. |
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement. |
| Observations | | Thornton Cleveleys was a Municipal Borough in the early 1950s and so a parish survey map was not compiled. |
| Draft Map | | The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations | | The application route was not shown on the Draft Map and no representations were made to the County Council. |
| Provisional Map | | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to |

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| | | be made to the Crown Court. |
| Observations | | The application route was not shown on the Provisional Map and no representations were made to the County Council. |
| The First Definitive Map and Statement | | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations | | The application route was not shown on the First Definitive Map and Statement. |
| Revised Definitive Map of Public Rights of Way (First Review) | | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. |
| Investigating Officer's Comments | | From 1953 through to 1975 there is no indication that the application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use |

| | | |
|----------------------------------|--|---|
| | | <p>(always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations | | No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs. |
| Investigating Officer's Comments | | There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land. |

The application route does not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered as common land.

Landownership

The land is owned by NPL Estates Limited and their response to the consultation is set out further below in this report.

Summary

The 2014 site evidence confirmed the existence of a walked path between point A and point D and use at that time was significant enough to have created a worn path. Between point D and point E the route was accessible but there was no evidence of its existence on the ground. Access through the fence at point E was possible but difficult as it was necessary to climb over the fence and negotiate the brambles. No worn route was evident across the rough land between point E and point F.

Since that time development works have removed any existence of the route between point A and point D.

There is no evidence of the physical existence of a worn track on any of the Ordnance Survey maps produced from 1848 to the current day with the exception of the gap between the terrace houses that existed between point E to point F from 1912 to at least 1971 and it is suggested that this gap was constructed to provide access to the rear of the terraced properties rather than forming part of the application route.

For a rural footpath crossing agricultural land it is not necessarily uncommon for a route not to be shown – particularly if use was light. The aerial photographs inspected appear to suggest access would have been available between points A, B, C, D and E in the 1940's, 1960's, 1988, 2000, 2008 and 2010 and that during that time parts but not all of the route were visible.

Between point A and point D the route appears to have crossed farmland with access to the field from Pool Foot Farm which involved use of the application route from point B to point D. There is no photographic evidence supporting use of the route from point A to point B until 2010 and this is supported by the Google images from 2012 showing access was available at point A.

Between point D and point E it appears that the route has crossed land forming part of a playing field since the 1960s to the present day. A defined route is not shown on any maps or aerial photographs and the route would have crossed pitches marked out for either cricket or football during much of this time.

Since the demolition of the terrace houses on Gamble Street there is no map or documentary evidence for the route between point E and point F.

No other documentary evidence examined supports or counters the view that the route was considered to be a public footpath.

Head of Service - Legal and Democratic Services' Observations

Legal and Democratic Services Observations

Information from the applicant

In support of the application the applicant has provided 10 user evidence forms, the evidence is set out below:

9 users have provided a response when asked how long they have known the route:
0-20 years (4) 21-40 years (3) 41-60 years (2)

9 users have used the route on foot and one user hasn't, the years in which the users have used the route is shown below:

| | | | |
|--------------|--------------|--------------|--------------|
| 1954-2014(1) | 1965-2014(1) | 1976-2014(1) | 1992-2014(1) |
| 1998-2014(1) | 1999-2014(2) | 2000-2013(1) | |

1 user did not provide a response to this question.

The main places the users were going to and from include:
visiting friends or relatives, school, taking the dog for a walk, from Wembley Road to Ormerod Street, home to Fleetwood Road, Red March to home and to Bourne Poacher.

The main purposes for using the route include leisure, exercise, doing the school run, visiting friends or family, going to the shops or to get the bus, dog walking, social reasons and for car MOTs / repairs.

The use per year varies:

4-8 times, 10 times, 50 times, 100 times, nearly every day, every day and often.

8 of the users have never used the route on horseback, 2 users did not provide a response to this question, 2 users have used the route on motorcycle / vehicle, once since 1998-2014 and the other has used it since 2000 when they learnt to drive.

6 users have seen other people using the route on horseback during the years of 1992-2014, 1996-2014(daily), 1999-2014(2 users), 2000-2013, 2000-2014.

4 of the users have seen others using the route on motorcycle / vehicle between the years of

1976-2014, 1998-2014, 2000-2013, 2000-2014

Some users mention they have seen others using the route by dog walking, exercise and camping.

7 of the users agree that the route has always run over the same line, 1 user responded with 'same ish', another user responded with 'yes route has remained the same apart from when flooded' and 1 user responded with 'all round field from 2000-2014'.

All of the users agree there have never been any stiles / gates / fences along the route and they have never been prevented access.

None of the users have ever worked for a landowner or been a tenant of the land that is crossed by the route.

None of the users have ever been stopped or have had to turn back when using the route, nor have they heard of anyone else having been stopped or having to turn back.

The users all agree that they have never been told that the route they were using was not a Public Right of Way, nor have they ever seen any signs, however one user responded 'no, no signs of legible context', and none of the users have ever asked permission to use the route.

At the end of filling in a user evidence form, users are asked to provide any further information they feel is relevant to the application, this extra information is set out below:

- 'Fish on pond with uncle, walk the dog, leisure'
- 'my next door neighbour has used this footpath for over half a century, particularly in recent years to walk his dogs'
- 'as children we were told not to go near the cricket pavilion as it belonged to ICI'
- 'bus routes are changing and going to Fleetwood Road is the best way to get bus to Fleetwood'
- 'local people have used this route for social and health activities as well as a shorter route away from busy traffic'
- 'love the fields as they are. Great for dog walking etc., children to play etc. Some of my earliest memories are of my nan taking me to feed horses in the field adjoining Ormerod Street as a child'

Objection from Landowner NPL Estates Limited

NPL Estates Limited strongly resist any decision of the County Council to make a Definitive Map Modification Order in this instance and, were the County Council minded to do so, they would submit representations, supported by witness evidence, that demonstrates that there has at no time been a public footpath along the route shown on the consultation plan.

NPL Estates Limited purchased the land on 8th June 2001, at that time they erected fences and signage to stop people entering the southern boundary of the property. The erection of such fences and signage alone demonstrates that there has not been any intention whatsoever to dedicate any route as a public footpath.

To the north of the property there are 3 existing football pitches which the purported path dissects. The presence of the pitches is clearly an interruption to any claimed path rights.

They have provided copies of photographs of the property taken in 2008 and several more photographs taken recently, these photographs demonstrate that there is no footpath on the property.

They confirm as landowners, that there is no public footpath through the site, they will dispute any evidence that is presented that states that the public has used the way without interruption for 20 years.

In addition, prior to their acquisition of the site in 2001, the land was used for active farming purposes and thus was not open to the public to access or use.

In light of what NPL have mentioned, they believe that the County Council cannot properly come to the view that it has sufficient evidence before it that a right of way has been shown to exist and, on this basis, it cannot possibly make a Definitive Map Modification Order in these circumstances.

Planning permission for the property has been approved by Wyre Borough Council on 4th June 2014, the planning permission approval is to provide a community sports complex and training ground.

The design of the facility has incorporated a new pedestrian footpath from north to south from Wembley Road (adjacent and parallel to Gamble Road) to Ormerod Road, which provides a similar route and route length to that proposed. The facility is predominantly for public use and recreation.

Further to their first letter NPL Estates Limited provide a second letter with 2 witness statements, they explain that the 2 employees have been at the Hillhouse International Business Park, since 1970 and 2001 and have never recalled there being a designated footpath on Poolfoot Farm. There is obvious signage in the area stating 'PRIVATE PROPERTY KEEP OUT' and thus access gained by any persons is illegal. The signage has also been witnessed by the Wyre Borough Council Chairman on the 3rd September 2014, prior to the approval of the planning application for the sports complex.

1st Witness Statement from Peter Kenneth Naylor

'I have been a resident in the Thornton area since 1970 to present date and employed on the former ICI owned Hillhouse Site throughout the same time period.

As a goalkeeper for the ICI football club in the 1970's, I regularly trained and played on the football pitches opposite the Burn Naze public house.

Whenever the ball was kicked into the fields behind the southerly goal, I had to climb over a continuous barbed wire fence to retrieve the ball from a field full of grazing cattle.

There was certainly no sign of a footpath or gaps in the fence to ever indicate a public right of way of any description.

This situation hadn't changed up to the late 1990's, when I was then refereeing and coaching on the same pitches.

During the last 10 years, my involvement as an NPL employee included investigating fly tipping / vandalism on NPL owned land adjacent to the Ormerod Street area.

There is no dedicated footpath from this end: continuous fences have been damaged to gain illegal access for riding trail bikes on the land, causing nuisance to the local residents and for fly-tipping rubbish mainly in the ponded areas.'

2nd Witness statement from Scott Carswell

'I have been an employee of NPL Estates since 2001 based at Hillhouse Business Park where one of my duties is to look after NPL's landholding in the area.

This area of Thornton, known as Pool Foot Farm, was a working farm until around 2004, all be it latterly the principle business was stabling horses for local people who would use the land for horse-riding.

The area has been visited weekly either by myself or one of the services team when signage 'Private Property Keep Off' and fence lines would be checked along with the

internal fields area for illegal fly-tipping. I would add that Wyre Borough Council Planning Committee visited the area on the morning of 3rd September 2014 prior to the approval of the planning application for the sports complex, when the Chairman of the committee noted the presence of the 'Private Property Keep Off' signs.

In conclusion, this area, in my time, has never had public access and never has had a footpath crossing the fields.'

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User evidence
- Local knowledge
- 2010 Arial Photograph and 2012 Google Images

Against Accepting the Claim

- Lack of evidence of the route existing on any of the maps which have been inspected
- Photographs provided by NPL Estates
- Reference to action by the owners
- Old signage located at Point D of the route

Conclusion

The claim is that this route is in law a public footpath and should be recorded on the Definitive Map and Statement as such.

There is no express dedication and so it is advised that Committee consider whether a dedication can, on balance, be deemed under S31 Highways Act 1980 or inferred at Common Law from all the circumstances.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user can be the circumstance from which to infer a dedication. With regards specifically to the Finance Act 1910 Map evidence, it is advised that whilst it is likely that there will be maps and field books held at the National Archives in claims such as this where there is modern user evidence and no strong map evidence of a route in the early 1900's, it would not be the usual practice of the Authority to go to the expense of employing an officer to research such records unless an Order is subsequently made and objected to. Whilst it may be difficult to now indicate an intention to dedicate by NPL Estates Limited since their actions in 2014, Committee is advised that the user of the route prior to 2014 may be sufficient to indicate that the owners at that time did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred.

Common law does not require there to be twenty years of use. The use would appear to be as of right and exercised by sufficient members of the public.

If Committee however is not content that a dedication in this matter may be inferred at common law then the user evidence should be considered and s31 applied.

S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. The evidence in this matter is overwhelmingly user evidence, countered by evidence of actions taken by the owners of the land in question. On balance it is considered that the claimed route was not called into question until 2014 when the route between point A and point D became no longer accessible due to the site having been fenced off with the construction of a community sports complex and training ground being well under way and the twenty year period to consider would therefore be 1994 to 2014.

From the user evidence information it would appear that neither the fencing and signage which the owner claims to have erected on their purchase of the land in 2001 in an attempt to stop people entering the southern boundary of the land nor the said physical use and marking of the land for sports activities brought home a challenge to a significant number of users. Other than 1 user referring to 'no signs of a legible context', none have seen any signs along the route, been stopped or required to turn back, told that the route was not a Public Right of Way or asked for permission to use the route. It is noted that old signage stating 'Private Property Keep Out' is located at Point D of the route. However it suggested that this signage is not sufficient in its positioning to indicate which private land it refers to.

All of the users agree that there have never been any stiles, gates or fences along the route and that they have never been prevented access.

Taking all the evidence both modern and old into account the Committee may consider that a dedication in this matter may be deemed under S31 or inferred under common law and that an Order should be made and promoted to confirmation.

Risk Management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex A included elsewhere on the Agenda. Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985
List of Background Papers

| <u>Paper</u> | <u>Date</u> | <u>Contact/Directorate/Tel</u> |
|---------------------------------------|-------------|---|
| All documents on File Ref: 804-557 | various | Megan Brindle , 01772 535604, Legal and Democratic Services |

Reason for inclusion in Part II, if appropriate

N/A

